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8 UNITED STATES DISTRICT COURT  
9 WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

10 JOSE RAFAEL CASTRO-LINO,

11 Petitioner,

12 v.

13 RON HAYNES,

14 Respondent.

CASE NO. 3:19-cv-05405 BHS-JRC

ORDER DENYING  
APPOINTMENT OF COUNSEL

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16 The District Court has referred this petition for a writ of habeas corpus to United States  
17 Magistrate Judge J. Richard Creatura. The Court's authority for the referral is 28 U.S.C. §§  
18 636(b)(1)(A) and (B) and local Magistrate Judge Rules MJR 3 and MJR 4. Before the Court is  
19 petitioner's motion for appointment of counsel. *See* Dkt. 16.

20 Although indigent defendants in criminal cases are entitled to appointed counsel, there is  
21 no right to appointed counsel in habeas proceedings unless an evidentiary hearing is required or  
22 unless appointed counsel is necessary for the effective use of discovery procedures. *See*  
23 *Terrovona v. Kincheloe*, 912 F.3d 1176, 1181 (9th Cir. 1990); Rules Governing Habeas Corpus  
24 Cases Under Sec. 2254, Rule 8(c). The Court may request an attorney to represent indigent civil

1 litigants under 28 U.S.C. § 1915(e)(1), but should do so only under “exceptional circumstances.”  
2 *Agyeman v. Corrections Corp. of Am.*, 390 F.3d 1101, 1103 (9th Cir. 2004). “A finding of  
3 exceptional circumstances requires an evaluation of both the likelihood of success on the merits  
4 and the ability of the [petitioner] to articulate his claims *pro se* in light of the complexity of the  
5 legal issues involved.” *Wilborn v. Escalderon*, 789 F.2d 1328, 1331 (9th Cir. 1986).

6 Here, the Court has not ordered an evidentiary hearing or provided for discovery in this  
7 case, so that petitioner does not have a right to appointed counsel. As for whether the  
8 exceptional circumstances necessary to justify appointing counsel under § 1915(e) exist in this  
9 matter, petitioner’s grounds for relief are straightforward legal claims that rely on the record  
10 from the state court proceedings. Petitioner has so far been able to adequately articulate his  
11 grounds for relief and other requests in such a way that the Court can understand him.

12 Petitioner argues that counsel should be appointed because he is untrained in the law with  
13 limited law library access and cannot present this action “in the manner of a professionally  
14 trained attorney.” Dkt. 16, at 1. However, circumstances that are common to most petitioners  
15 requesting the appointment of counsel—such as a lack of legal training—do not constitute  
16 “exceptional circumstances.” *See Wood v. Housewright*, 900 F.2d 1332, 1335–36 (9th Cir.  
17 1990).

18 Regarding a likelihood of success on the merits, petitioner’s reiteration of one of the  
19 grounds in his petition does not establish a likelihood of success at this early stage in the  
20 proceeding. The Court notes that after petitioner requested the appointment of counsel, the Court  
21 requested additional briefing from respondent—who did not separately address one of  
22 petitioner’s grounds for relief—as well as the trial transcript in this matter. *See* Dkt. 17.

1 However, the request for the complete record and a complete answer to the petition do not  
2 establish a likelihood of success on the merits in this matter.

3 Therefore, petitioner's motion for counsel (Dkt. 16) is denied without prejudice.  
4 Petitioner may again request counsel if he is able to show the exceptional circumstances  
5 necessary to warrant the appointment of counsel.

6 Dated this 21st day of October, 2019.

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8 J. Richard Creatura  
9 United States Magistrate Judge  
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